IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION (LODG) NO.57 OF 2006

IN

WRIT PETITION NO.305 OF 2006

Gaurav Dhroov Co-op.Hsg.Soc.Ltd. ...Petitioner.

vs.

1.Mumbai Municipal Corporation & others. ...Respondents

Ms.Sumedha Rao, for Petitioner.

None for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 30th June, 2006.

P.C.:-

1. The facts that are material and relevant for deciding this petition are that the petitioner had filed the Writ petition no.305 of 2006 in this Court. The prayers that were made in that writ petition are quoted in paragraph 2 of the contempt petition. Paragraph 2 reads as under:-

“2. The Petitioner states that they filed Writ Petition no.305 of 2006 in High Court, Bombay for the following reliefs:-

(a) The Hon'ble Court be pleased to issue a Writ of mandamus or any other order, writ or direction in the nature of mandamus directing Respondents No.2 and 3 to issue Occupation Certificate to building known as Gaurav Dhroov.

(b) The Hon'ble Court be pleased to issue a writ of Mandamus or any other order, Writ or direction in the nature of mandamus directing Respondents No.2 and 3 to quash and set aside the sanction for using Wing A to be constructed in the Petitioner's Compound;

(c) The Hon'ble Court be pleased to issue a Writ of Mandamus or any other order, Writ or direction of Mandamus or any other order, writ or direction directing Respondent no.4 to assess the buildings of the Petitioners and issue property tax Bills for each flat;

(d) Pending the hearing and final disposal of Petition, the Hon'ble Court be pleased to direct Respondent no.2 to grant water connection to the building of Petitioner's on humanitarian grounds;

(e) Pending the hearing and final disposal of the

Petition, the Hon'ble Court be pleased to restrain Respondent No.5 from carrying on any further construction in Petitioners' Compound;

(f) Pending the hearing and final disposal of the Petition, the Hon'ble Court be pleased to direct Respondent No.3 to visit the site and prepare a plan as per the actual sanction.

(g) Pending the hearing and final disposal of the Petition, the Hon'ble Court be pleased to direct respondent no.2 to consider application dated 23.6.2004.

(h) Pending the hearing and final disposal of the Petition, the Hon'ble Court be pleased to issue property tax bills for Petitioner's Buildings;

(i) For cost of this Petition;

(j) For any other reliefs in interest of justice."

Perusal of the prayers shows that the basic prayer of the petition was to issue writ of mandamus directing the Corporation to issue occupation certificate in relation to the building known as Gaurav Dhroov. By prayer clause (g) an interim order was sought to operate during the pendency of the petition, directing the respondent no.2 Commissioner of the Corporation in the Writ petition to consider the application

made by the petitioner dated 23.6.2004. Writ petition no.305 of 2003 was finally disposed of by the Division Bench by its order dated 7.2.2006. The order reads as under:-

> " This petition can be conveniently disposed of by directing respondent no.2 – Municipal Commissioner, Bombay Municipal Corporation to consider and decide in accordance with law the application/notice dated 23.8.2004 as expeditiously as possible, preferably in four weeks. Rest of the claims can thereafter be made to Appropriate Authority. Petition accordingly stands disposed of."

In this order the date of the application is mentioned as 23.8.2004, but the learned Counsel submits that that is a typographical error and the correct date of the application is 23.6.2004. By the order quoted above the Division Bench has directed the Corporation to consider and decide the application of the petitioner dt. 23.6.2004 preferably within a period of four weeks. The application was not

decided within the period of four weeks. Therefore, the petitioner had taken out a notice of motion no.149/06 in the writ petition. On that notice of motion an order was passed on 31.3.2006 disposing of that notice of motion. That order reads as under:-

> " The Municipal Commissioner with whatever information is available on record to dispose of the

> issue pending before him as per directions of the order of this Court dated 7th February,2006 within four weeks from today. It is made clear that no further time will be granted. Motion disposed of accordingly."

The combined effect of the order dt.7.2.2006 and the order dated 31.3.2006 is that the application of the petitioner dated 23.6.2004 is to be decided by the Corporation within a period of four weeks from 31.3.2006. Because the Corporation has not decided that application within that time, the present contempt petition has been preferred.

2. In order to consider whether the respondents have committed willful breach of the order made by this Court, firstly it is to be considered what is the order made by this Court. As observed above, the order made by this Court is that this Court has directed the Corporation to decide, in accordance with law, the application of the petitioner dated 23.6.2004. The copy of the application dated 23.6.2004 is not annexed to this petition. But a copy of that application has been made available to me for perusal. That application is addressed by the Advocate to the Municipal Corporation on behalf of the residents and the proposed society of Gaurav Dhroov Building. In paragraph '1' of that application, it is stated that the property is the subject matter of the Writ Petition no.379 of 2003 and the Writ Petition

no.2822 of 2003. It is stated that the building has been constructed by M/s.Yash Developments and there are 81 tenements in the building which are occupied by the flat purchasers. It is stated that the clients of the Advocate on whose behalf he has written this notice are the bonafide purchasers of the flats and that though they are bonafide purchasers they have not been joined as parties in the Written Petition. A grievance is made that they are not getting co-operation from the builder and that they are suffering day to day difficulty because of the acts committed by the builder. It is paragraph ' 4 ' of that application is material and relevant, which reads as under:-

> "4. From the Judgment dated 5.5.2004 given by the Division Bench consisting of Lordship Justice Gokhale and Mohite, our clients have learnt that the Hon'ble Court has given direction to the B.M.C. And the Govt. authorities to consider the representation of affected parties. Our clients have been told that the builder has put up the proposals for regularisation. Our clients are also told that the representation of the concerned persons would be taken into account before the Commissioner decide the issue of regularisation. As per the said direction of the Hon'ble High Court we are writing this letter to you on behalf of our clients. Our clients in view thereof request that before passing any adverse order our clients being the affected parties our

> clients may be given opportunity to represent themselves and be given personal hearing as per the direction of the Court. “

Perusal of the above quoted paragraph of the application shows that the Division Bench of this Court by judgment dated 5.5.2004 has directed the Corporation and the Government Authorities to consider the representation of the affected parties i.e. the persons on whose behalf this notice has been given, and that the builder has also put up a proposal for regularisation. They have also learnt that the representation of the concerned persons are to be taken into consideration before the Commissioner decides the issue of regularisation. Therefore, the request made in this application is that before passing any adverse order affecting interest of the persons on whose behalf this notice is given, they should be given an opportunity to represent themselves and be given personal hearing. It is not the allegations of the petitioner that the proposal submitted by the builder referred to in this notice or the representation made by the affected persons has been decided by the Corporation and in that an order adverse to the interest of the persons who have made the application has been made, without giving the petitioner an opportunity of personal hearing. In any case, by the order passed by the Division Bench in Writ petition no.305 of 2006 actually there is no direction for

granting any personal hearing. All that the Division Bench has done is that it has directed the Corporation to consider the application of the petitioner for granting them personal hearing before deciding the representation made by the others and the proposal submitted by the builder for regularisation of the building. In my opinion, merely because the Corporation has not passed any order within the time fixed by this Court, either deciding to grant personal hearing to the petitioner or deciding not to grant personal hearing to the petitioner, will not amount to contempt of this Court. Really speaking, if the Corporation takes a decision whether to grant personal hearing to the petitioner or not, any time before deciding the representation and the proposal of the builder, could be substantial compliance of the order passed by this Court. An action for contempt is a quasi- criminal action and therefore, it is not resorted to as a matter of routine. In my opinion, therefore, I do not see any willful breach of the order passed by this Court committed by the respondent. The contempt petition is therefore, disposed of.